



**FILED**

Dec 16 2008, 9:47 am

*Beverly L. Smith*

**CLERK**

of the supreme court,  
court of appeals and  
tax court

**BRADFORD, Judge**

In this pro se appeal, Appellant-Petitioner Danny Ramsey challenges the trial court's dismissal of his motion to correct erroneous sentence. We affirm in part, reverse in part, and remand.

## **FACTS**

It appears that in 2004 Ramsey was charged under two cause numbers, 14C01-0402-FA-3 ("FA-3") and 14C01-0404-FA-5 ("FA-5"), which were consolidated for trial.<sup>1</sup> Following a May 18-20, 2005 jury trial, Ramsey was convicted, in Cause No. FA-3, of Class A felony Dealing in Methamphetamine (Count 1), Class C felony Possession of a Narcotic Drug (Count 2), Class D felony Maintaining a Common Nuisance (Count 3), and Class A misdemeanor Possession of Marijuana (Count 4), and he was determined to be a habitual offender. It appears that Ramsey was also convicted, presumably in Cause No. FA-5, of eight counts of Class A felony dealing in methamphetamine.

On August 2, 2005, the trial court sentenced Ramsey in Cause No. FA-3 to concurrent terms of thirty years for Count 1, four years for Count 2, one and one-half years for Count 3, and one year for Count 4. In addition, the trial court sentenced Ramsey to a consecutive term of fifteen years for being a habitual offender and ordered that his sentence in Cause No. FA-5, which consisted of eight concurrent sentences of thirty years each, be served consecutively with his sentence in Cause No. FA-3. Ramsey's aggregate sentence was seventy-five years.

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<sup>1</sup> The charging informations were not included in the appendix, nor was the CCS for Cause No. FA-3.

On July 2, 2008, Ramsey filed a pro se motion to correct erroneous sentence. The State moved to dismiss the motion on July 16, 2008, and the trial court granted the State's motion. This appeal follows.

### **DISCUSSION AND DECISION**

Upon appeal, Ramsey challenges the trial court's dismissal by arguing that (1) his habitual offender enhancement was improperly entered as a separate sentence, (2) the habitual offender finding was not properly based upon prior felony convictions, and (3) the trial court's sentencing statement was inadequate to justify his sentence. The State responds by arguing that, with the exception of Ramsey's challenge to the separate habitual offender sentence, his claims are not a proper ground for seeking relief through a motion to correct erroneous sentence.

We agree with the State. A motion to correct erroneous sentence is appropriate only when the sentence is "erroneous on its face." *Robinson v. State*, 805 N.E.2d 783, 786 (Ind. 2004) (internal quotation omitted). Such a motion may only be used to correct sentencing errors that are clear from the face of the judgment imposing the sentence in light of the statutory authority. *Id.* at 787. Claims that require consideration of the proceedings before, during, or after trial may not be presented by way of a motion to correct sentence. *Id.*

Without reference to other documents and consideration of other proceedings, we are unable to evaluate from the face of Ramsey's judgment whether his habitual offender enhancement was based upon certain allegedly pardoned and "misdemeanor-like" convictions which, as he alleges, cannot support such an enhancement. For similar

reasons, we are unable to determine whether the trial court's sentencing statement and consideration of sentencing factors was adequate to justify his sentence. These claims are not a proper matter for a motion to correct erroneous sentence, and we find no error in the trial court's denial of his motion with respect to these grounds.

However, with respect to Ramsey's claim that the trial court improperly entered a separate sentence on the basis of his being a habitual offender, we are able to evaluate the merits of this claim on the face of the judgment and therefore conclude that, as the State concedes, this is a proper claim for relief in the instant action. In sentencing Ramsey as a habitual offender, the trial court's judgment states the following: "Court now sentences defendant, Danny W. Ramsey, to fifteen (15) years on the Habitual Offender count, said sentence to be served consecutively to the sentences in this cause and in 14C01-0404-FA-005." App. p. 45a. A habitual offender finding does not constitute a separate crime nor result in a separate sentence, but rather results in a sentence enhancement imposed upon the conviction of a subsequent felony. *Greer v. State*, 680 N.E.2d 526, 527 (Ind. 1997). In the event of simultaneous multiple felony convictions and a finding of habitual offender status, trial courts must impose the resulting penalty enhancement upon only one of the convictions and must specify the conviction to be so enhanced. *Id.* Accordingly,

we reverse the trial court's dismissal of Ramsey's motion to correct erroneous sentence on this ground and remand to the trial court to correct this sentencing error.<sup>2</sup>

The judgment of the trial court is affirmed in part, and reversed in part, and the cause is remanded.

FRIEDLANDER, J., and MAY, J., concur.

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<sup>2</sup> Citing *Carter v. State*, 686 N.E.2d 834, 839 (Ind. 1997), the State suggests that we decline to remand to correct this sentencing error on the basis that it will have no impact on Ramsey's sentence. In *Carter*, the court raised the issue of this error *sua sponte* and observed that the defendant's sentences—to be served concurrently—were both for Class A felonies and consisted of equivalent forty-five-year terms. *Id.* The *Carter* court therefore determined that it was unnecessary for the trial court to specify which Class A felony the enhancement should attach to. *Id.* Here, the sentencing error at issue is not a *sua sponte* observation by an appellate court but the basis for Ramsey's appeal of his dismissed motion to correct erroneous sentence. Perhaps more importantly, Ramsey's convictions to which the habitual offender enhancement may be attached include a Class A felony, a Class C felony, and a Class D felony. Under Indiana Code section 35-50-2-8(h) (2004), which was presumably the applicable statute at the time of Ramsey's crimes, the court shall sentence a person found to be a habitual offender to an additional fixed term that is not less than the presumptive sentence for the underlying offense nor more than three times the presumptive sentence for the underlying offense, so long as the additional sentence does not exceed thirty years. Accordingly, the permissible habitual offender enhancement for a Class A felony is thirty years based upon the presumptive thirty-year sentence for a Class A felony. *See* Ind. Code § 35-50-2-4 (2004). The permissible habitual offender enhancement for a Class C felony is from four to twelve years based upon the presumptive four-year sentence for a Class C felony. *See* Ind. Code § 35-50-2-6 (2004). The permissible habitual offender enhancement for a Class D felony is from one and one-half to four and one-half years based upon the presumptive one-and-one-half-year sentence for a Class D felony. *See* Ind. Code § 35-50-2-7(2004). Significantly, neither the Class A, Class C, nor Class D felony convictions can support the fifteen-year enhancement which Ramsey received.